

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Norfolk Division

ERIC ALLEN VICKERS, #310165,

Petitioner,

v.

ACTION NO. 2:05cv147

DIRECTOR OF THE DEPARTMENT
OF CORRECTIONS,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to Petitioner's conviction in the Circuit Court of the City of Portsmouth for capital murder, as a result of which he was sentenced to serve life imprisonment in the Virginia penal system.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. On February 1, 2006, a Report and Recommendation was filed recommending that petitioner's petition for writ of habeas corpus be denied and the respondent's motion to dismiss be granted. Petitioner filed a notice of appeal to the Fourth Circuit Court of Appeals on February 7, 2006. The appeal was dismissed on October 23, 2006, and petitioner's petition for rehearing was denied on November 29, 2006.

On December 20, 2006, petitioner filed a Motion for Relief from a Judgment asserting the United States Magistrate Judge was without jurisdiction to enter judgment. The motion was denied,

and the order advised each party of his right to file written objections to the findings and recommendations made by the Magistrate Judge.

On January 30, 2007, the Court received Petitioner's Objections to the Report and Recommendation. Petitioner argues Grounds (D), (G), (H), and (I)(1) were exhausted in the state court. As stated in the Report and Recommendation, Vickers makes legal arguments similar to those made in his state habeas petition in several of these Grounds, however he supports the arguments with allegations different from those presented to the state court. As a result, these Grounds are not exhausted. Next, the petitioner asserts that the state court's adjudication of Ground (E) on the merits was an unreasonable application of Strickland v. Washington, 466 U.S. 668 (1984). This Court finds the Virginia Supreme Court reasonably applied Strickland v. Washington to petitioner's ineffective assistance of counsel claim in Ground (E).

The Court, having reviewed the record and examined the objections filed by the petitioner to the United States Magistrate Judge's Report, and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report of the United States Magistrate Judge filed February 1, 2006. It is, therefore, ORDERED that the petition be DENIED and DISMISSED.

It is further ORDERED that judgment be entered in favor of the respondent.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this

Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within 30 days from the date of entry of such judgment.

The Clerk shall mail a copy of this Final Order to all counsel of record.

/s/ Jerome B. Friedman

UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
March 23 , 2007